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7 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE PERSONAL RESTRAINT PETITION
10 OF:

No.: 46673-2-II

11 JOSE ISIDRO-SOTO,

**SUPPLEMENTAL RESPONSE TO
PERSONAL RESTRAINT PETITION**

12
13 **1. IDENTITY OF RESPONDING PARTY.**

14 The State of Washington responds by and through Katherine L. Svoboda, Grays Harbor
15 County Prosecuting Attorney and seeks relief as designated in Part 2 of this response.

16 **2. RELIEF REQUESTED.**

17 The State of Washington requests dismissal of the Personal Restraint Petition filed herein.

18 **3. PROCEDURAL BACKGROUND.**

19 Pursuant to a prior order of this court, a reference hearing was held in this matter on March
20 10, 2016. On September 6, 2016, the Petitioner filed a Supplemental Brief which the State now
21 responds to.

22
23 **4. GROUNDS FOR RELIEF AND ARGUMENT.**

24 Ineffective Assistance of Counsel

25 The Washington State Supreme Court adopted a two prong test stated for analysis of the
26 effectiveness of a defense counsel performance. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L.
27

1 Ed. 2d 674, 104 S. Ct. 2052 (1984). The Court stated that “[t]he purpose of the requirement of
2 effective assistance of counsel is to ensure a fair and impartial trial.” *State v. Thomas*, 109 Wn.2d
3 222, 225; 743 P.2d 816 (1987). In order to maintain a claim of ineffective assistance of counsel, the
4 defendant must show not only that his attorney’s performance fell below an acceptable standard, but
5 also that his attorney’s failure affected the outcome of the trial.

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7 *Strickland v. Washington* explains that the defendant must first show that his counsel’s
8 performance was deficient. 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Counsel’s
9 errors must have been so serious that counsel was not functioning as the “counsel” guaranteed the
10 defendant by the Sixth Amendment. *Id.* The scrutiny of counsel’s performance is guided by a
11 presumption of effectiveness. *Id.* at 689. In analyzing the first prong, the court must decide whether
12 defense counsel’s actions constituted a tactical decision which was part of the normal process of
13 formulating a trial strategy. *See, e.g., Tarica*, at 373, 798 P.2d 296.

14
15 Secondly, the defendant must show that the deficient performance prejudiced the defense. *Id.*
16 at 687. The defendant must show “that counsel’s errors were so serious as to deprive the defendant
17 of a fair trial, a trial whose result is reliable.” *Id.* For prejudice to be claimed there must be a showing
18 that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the
19 proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability
20 sufficient to undermine confidence in the outcome. *Id.*

21
22 If both prongs of the test are not met than the defendant cannot claim the error resulted in a
23 breakdown in the adversary process that renders the result unreliable. *Id.* at 687.

24 **Did the Petitioner receive effective counsel when entering his guilty plea in the matter at bar?**

25 **Yes. He was properly advised of the consequences of his plea and was not misled by counsel.**
26
27

1 The Petitioner argues that, under *Sandoval*, trial counsel was required to advise him that “by
2 pleading guilty, he would be deportable from the United States.” Supp. PRP at 3. However, the
3 Petitioner’s reliance on *State v. Sandoval*, 171 Wash.2d 163, 249 P.3d 1015 (2011), as support for
4 finding counsel deficient is misplaced. In *Sandoval*, defense counsel told his client “that he should
5 accept the State's plea offer because he would not be immediately deported and that he would then
6 have sufficient time to retain proper immigration counsel to ameliorate any potential immigration
7 consequences of his guilty plea.” 171 Wash.2d at 167, 249 P.3d 1015.
8

9 Here, unlike *Sandoval*, defense counsel did not misadvise the Petitioner of the immigration
10 consequences of his plea. In fact, trial counsel went over the plea form contained, in section 6(i), the
11 following: “If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
12 crime under state law is grounds for deportation, exclusion from admission to the United States, or
13 denial of naturalization pursuant to the laws of the United States.” Exhibit 3. Trial counsel could not
14 remember specifically any further advice he may have given regarding the immigration
15 consequences of the plea, he testified “it’s possible” that he never advised the Petitioner that he was
16 facing certain deportation. Findings of Fact 14.
17
18

19 Due to the time that has elapsed since the time of the plea, trial counsel lacks a specific
20 memory of what was discussed. However, what is clear from the VRP and the court’s written
21 findings is that the Petitioner was advised in the guilty plea of the consequences, and that trial
22 counsel did not misadvise him. Taken as a whole, it is a reasonable inference that when going over
23 the plea form trial counsel would have discussed the immigration consequences with the Petitioner.
24

25 As the record indicates that the Petitioner was advised of the immigration consequences, trial
26 counsel’s performance was not deficient.
27

1 The Petitioner testified that "he would not have accepted the plea agreement if he had been
2 advised that his plea of guilty would result in his certain deportation." Findings of Fact 10. However,
3 the plea form clearly advised the Petitioner of this consequence. Considering the additional charges
4 that were dropped, the Petitioner gained a significant benefit by the plea and likely would choose to
5 face deportation with one conviction rather than three.

6
7 **5. CONCLUSION.**

8 The petitioner cannot show that he was not on notice of the immigration consequences that
9 potentially followed his plea nor that he was prejudiced by any such failure, so he cannot make a
10 substantial showing that he is entitled to the relief he seeks. The Petitioner should not be able to undo
11 a conviction 12 years after the fact based on the record before this court.

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13 DATED this 17 day of November, 2016.

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15 Respectfully Submitted,

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17 By 

18 KATHERINE L. SVOBODA
19 Prosecuting Attorney
20 WSBA #34097
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GRAYS HARBOR COUNTY PROSECUTOR

November 17, 2016 - 6:50 PM

Transmittal Letter

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Court of Appeals Case Number: 46673-2

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